

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

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| IN RE: BLUE CROSS BLUE SHIELD ANTITRUST LITIGATION (MDL No. 2406) |))) | Master File No. 2:13-CV-20000-RDP This document relates to all cases. |
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**ORDER REGARDING CERTIFICATION
UNDER 28 U.S.C. § 1292(b) AND
AMENDED ORDER REGARDING SECTION 1 STANDARD OF REVIEW**


In accordance with the accompanying Memorandum Opinion, Defendants' Motion for Certification under 28 U.S.C. § 1292(b) (Doc. # 2085) is **GRANTED**. The court's April 5, 2018 Order Regarding Section 1 Standard of Review and Single Entity Defense is **AMENDED** as follows: The court's order holding that "Defendants' aggregation of geographic market allocations and output restrictions are due to be analyzed under a per se standard of review" (Doc. # 2064) involves a controlling question of law as to which there is substantial ground for difference of opinion, and an immediate appeal from the order may materially advance the ultimate termination of this litigation.¹

The court therefore certifies the following controlling question of law:

Whether *Topco*, *Sealy*, and *Palmer* remain viable and require the application of the per se rule to a combination of restraints, involving horizontal market allocation and horizontal output restrictions, agreed to by competitors and potential competitors, where Defendants claim, under *BMI*, that there are at least arguable procompetitive benefits to the combination?

¹ The court enters this Certification Order with the understanding -- agreed to by all parties on the record -- that (1) the parties will not seek to stay all proceedings in this MDL action while the interlocutory appeal is pending, and (2) the parties will work together in good faith to determine what discovery and litigation steps can be undertaken while the appeal is pending.

DONE and **ORDERED** this June 12, 2018.



R. DAVID PROCTOR
UNITED STATES DISTRICT JUDGE